

February 27, 2003

D.T.E. 02-AD-02

Adjudicatory hearing in the matter of the complaint of Patricia James protesting rates and charges for services provided by Commonwealth Electric Company d/b/a NSTAR Electric.

APPEARANCES: Patricia and Wesley James
34 Adams Street
Plymouth, MA 02380
PRO SE
Complainant

Jeffery N. Stevens, Esq.
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Boston, MA 02199

FOR: COMMONWEALTH ELECTRIC COMPANY
d/b/a NSTAR Electric
Respondent

I. INTRODUCTION

On June 21, 2000, an informal hearing was held before the Consumer Division ("Division") of the Department of Telecommunications and Energy ("Department") on the complaint of Patricia James relative to rates and charges for electric service provided by Commonwealth Electric Company d/b/a NSTAR Electric ("Company"). Mr. Wesley James, husband of Patricia James, (collectively, "Complainant") appeared before the Department. The Complainant was dissatisfied with the informal hearing decision rendered on April 10, 2002 and requested, on April 11, 2002, an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.T.E. 02-AD-02.

Pursuant to notice duly issued, an adjudicatory hearing was held on August 27, 2002 at the Department's offices in Boston, in conformance with the Department's Regulations on Billing and Termination Procedures, 220 C.M.R. §§ 25.00 et. seq. The Complainant testified on his own behalf. The Company sponsored the testimony of Mary Ellen Molloy, customer service representative. The evidentiary record consists of six exhibits.

II. SUMMARY OF ISSUES

The Complainant disputes the bills rendered to his account by the Company for electrical use at 34 Adams Street, Plymouth, Massachusetts (the "Residence") from April 1, 1999 through May 12, 2001 (Tr. at 11, 20). The Complainant maintains that his bills are consistently high and do not reflect the actual electrical consumption at the Residence (Tr. at 6-8). The Complainant, therefore, asserts that the meter at the Residence was defective and presented a damaged meter box as evidence (Exh. PJ-1; Tr. at 7). The Complainant

further asserts that the Company acted irresponsibly when it failed to check the condition of the meter box during meter reads conducted at the Residence (Tr. at 8-10, 21-22).

The Company argues that the Complainant is responsible for the payment of all bills rendered between April 1, 1999 and May 12, 2001 because the bills were based on actual reads, and the meter tests performed by the Company and the Commonwealth of Massachusetts on the customer's meter showed that the meter was working properly (Exhs. CO-3; CO-4; Tr. at 8-9). The Company further argues that, according to Department precedent, a customer's impression of use is outweighed by actual readings from a meter tested and found accurate (Tr. at 9). In addition, the Company asserts that there is no factual evidence to indicate that the meter was damaged (id. at 53). Therefore, the Company contends that the complainant is responsible for the payment of the balance due of \$3,259.32 for bills rendered through July 24, 2002 (Exh. CO-1; Tr. at 53-54).

III. SUMMARY OF FACTS

A. The Complainant

The Complainant testified that in 1998 he purchased the Residence, a small A-frame house with five rooms, and moved in approximately "four years ago" (Tr. at 6, 12). The Complainant stated that he, his wife and daughter initially lived at the Residence, but that at present, he and his wife are the only residents (id. at 12, 14). The Complainant also noted that two other children were "in and out of the house" but did not live there all the time (id. at 14). The Complainant testified that the Residence was equipped with electric heat, which was disconnected and replaced with propane gas heat, and that the Residence has a 40- or 50-gallon

electric hot water heater (id. at 6, 13, 14). The Complainant stated that other electrical appliances used at the Residence included lights, a washing machine, a dryer, a refrigerator, a fan, a 55-gallon fish tank, a water pump and a stovetop (id. at 6, 14-15, 24).

The Complainant testified that he received high electric bills, some approximately \$300 (id. at 6, 26). The Complainant stated that he spoke to his neighbors and determined that they were paying approximately \$100 per month for electric service (id. at 7). The Complainant noted that the neighbors have bigger families and bigger houses (id. at 18, 23). The Complainant explained that he then determined to pay \$100 every month on his electric bill “until we find out what’s going on” and further explained that “[i]f my neighbors all around me are paying \$100 and less, I’ll pay \$100” (Exh. CO-1; Tr. at 20, 26-27). The Complainant testified that he requested meter replacements on two occasions (Tr. at 21-22). The Complainant recalled that (1) people told him the meter was fine on the first occasion, and (2) “three people in suits” told him the meter was fine on the second occasion (id. at 6, 9, 15-16). The Complainant further stated that on both occasions no one ever took the meter off to look at it (id. at 9, 16).

The Complainant testified that a power loss occurred on the first floor of the Residence, and that an electrician investigated the power loss the next day (id. at 7, 10). The Complainant stated that after the electrician told him the problem was in the meter box, he had the Company “come over and open the box” (id. at 7). The Complainant testified that after the meter was removed, a broken pole, burnt wires and corrosion were discovered in the meter box

(id. at 7, 20-21, 52). The Complainant presented the damaged meter box as evidence, but acknowledged that he owns the meter box and is responsible for its integrity (Exh. PJ-1; Tr. at 21). The Complainant stated that the electrician replaced the meter box, and the Company installed a new meter (Tr. at 27-28).¹ The Complainant testified that his electric bills were lower following the meter replacement, noting “this month’s” bill for \$107 (id. at 7, 17). The Complainant questioned why his bills were still a little high and fluctuating since the meter replacement; however, he stated that he was mainly concerned about the bills in the “\$200 or \$300 range” rendered before the meter box damage was discovered (id. at 18-20).

B. The Company

The Company testified that it rendered bills for the Complainant’s electric account monthly from April 1, 1999 through July 24, 2002 and that all bills were based on actual or verified reads with the exception of one estimated read (Exh. CO-1; Tr. at 31-32). The Company further testified that, as of July 24, 2002, the outstanding balance on the Complainant’s account was \$3,259.32 (Exh. CO-1; Tr. at 34). The Company noted that the Complainant’s account was converted from an electric-heat rate to a non-electric-heat rate on October 26, 1999 (Exh. CO-1; Tr. at 39).²

¹ The Complainant testified that he could not recall the exact date of the meter replacement (Tr. at 17, 27). The Company testified that the meter replacement occurred on May 12, 2001 (Exhs. CO-1, CO-2; Tr. at 32-33).

² The Company also explained that, from November 21, 2000 through November 26, 2001, the Complainant was erroneously billed at the higher default service rate rather than the lower standard offer rate. The Company testified that it corrected this error,
(continued...)

The Company testified that it conducted a meter test on December 3, 1999, as a result of a customer billing dispute (Tr. at 35). The Company further testified that the meter tested at 100.6 light load and 100.4 full load, within the standard deviation allowed by the Department (Exh. CO-3; Tr. at 35). The Company stated that a meter test was conducted on March 1, 2000 at the request of the Department, and confirmed that the meter tested accurate at 100.4 light load and 100.5 full load (Exh. CO-4; Tr. 36-37). The Company stated that both the December 3, 1999 and the March 1, 2000 tests were conducted on the meter removed from the Residence, meter number D795845 (Exhs. CO-3, CO-4; Tr. at 37).

The Company testified that the meter numbered D795845 was removed from the Residence on May 12, 2001 (Exhs. CO-1, CO-2; Tr. at 32-33, 37). The Company pointed out that page two of the Field Test Report, marked as Exhibit CO-2, indicates the Complainant contacted the company at 11:31 AM and reported (1) half the house going off, (2) a smell of smoke at the meter, and (3) an electrician advising shut-off of the main (Exh. CO-2; Tr. at 33). The Company stated that the column labeled "Crew Remarks" on page one of the Field Test Report contains the following notations: (1) bad meter socket; (2) customer problem; (3) referred to electrician; and (4) new meter installed (Exh. CO-2; Tr. at 33-34). The Company testified that there was no indication that the meter was damaged, but explained that it was Company policy to replace meters over 20 years old upon visiting a property for a specific purpose other than a standard meter reading (Tr. at 34, 48). The Company testified that meter

²(...continued)

crediting the Complainant's account \$2,424.87 and rebilling the account \$2,164.80 (Exh. CO-1; Tr. at 40).

number D795845 was installed November 1, 1976 (Exh. CO-3, CO-4, Tr. at 48). The Company added that, historically, on the Cape, “because of the saltwater there’s a tendency for corrosion, which slows the meters down” (Tr. at 45). The Company further stated that if a problem with a meter box was detected during a meter test, the Company would consider the problem a safety hazard, pull the meter, stop the electricity and tell the customer to get an electrician (id. at 50). The Company added that the problem would be the customer’s responsibility (id.).

The Company testified that new meter number 7097711 was installed on May 12, 2001 and that a test conduct on this meter on August 26, 2002 indicated that the meter was accurate, testing at 99.5 light load and 99.5 full load (Exh. CO-5; Tr. at 37-38).

IV. STANDARD OF REVIEW

The Department has held consistently that, where a meter has been tested and found accurate, past actual readings are correct absent clear and convincing evidence to the contrary. Nelder v. Boston Edison Company, D.P.U. 91-AD-38 (1994); Chapman v. Eastern Edison Company, D.P.U. 262 (1981). In addition, the Department repeatedly has found that a mere discrepancy in use is insufficient to rebut the accuracy of a meter test. Nelder v. Boston Edison Company, D.P.U. 91-AD-38; Barach v. Boston Edison Company, D.P.U. 91-AD-6 (1992); Brabazon v. Boston Gas Company, D.P.U. 85-AD-32 (1987). Moreover, actual readings from a meter tested and found to be accurate outweigh a customer's impression of use. Crossley v. Boston Gas Company, D.P.U. 576 (1983). The customer must meet a strict standard when faced with a meter tested and found accurate. The standard rests upon two basic premises:

(1) scientific evidence supports the certainty and reliability of tested meters; and (2) billing for utility consumption could not feasibly be based upon a customer's impression of his or her consumption. Mellen v. Boston Gas Company, D.P.U. 91-AD-8 (1994). Donovan v. Hingham Water Company, D.P.U. 758-B (1986).

V. ANALYSIS AND FINDINGS

The issue to be decided is whether the Complainant has overcome the presumption of accuracy that arose from the fact that his meter was tested and found accurate on two separate occasions. The standard to be applied is whether the Complainant can show by clear and convincing evidence that the original meter was defective. Nelder v. Boston Edison Company, D.P.U. 91-AD-38, at 5; Chapman v. Eastern Edison Company, D.P.U. 262, at 5.

The Complainant first asserts that his \$200 to \$300 electric bills are high considering the size of his home, the number of occupants living in his home and his appliance usage (Tr. at 12, 14, 23). The Complainant compared his bills to his neighbors' bills, and because his neighbors paid approximately \$100 each month for electric service, he concluded that his meter was not accurate (id. at 7-8, 18, 22-23). The meter test conducted on December 3, 1999 confirmed that the meter ran at 100.6 light load and 100.4 full load (Exh. CO-3). Likewise, the state-conducted test on March 1, 2000 verified that the meter ran at 100.4 light load and 100.5 full load (Exh. CO-4). The two meter tests both confirmed that the meter was accurate, testing within two percent of the standard measure allowed by the Department pursuant to G.L. c. 164, § 120 (Exhs. CO-3, CO-4). The Department finds that the meter tests were properly conducted and the meter was properly calibrated. The Department has consistently

held that mere impression of use, standing alone, is not sufficient to overcome the results of meter tests showing that the meter is working accurately. Mellen v. Boston Gas Company, D.P.U. 91-AD-8, at 5-6. The Department finds that the Complainant has not presented sufficient evidence to outweigh the objective meter tests conducted on December 3, 1999 and March 1, 2000.

The Complainant next argues that the damage to the meter box indicates that the meter was defective (Tr. at 7-8). The Complainant admits that he is responsible for the integrity of the meter box, but claims that the damaged meter box is evidence of a malfunctioning meter (PJ-1; Tr. at 21-22, 52). The Complainant further asserts that the Company was negligent in failing to pull the meter and discover the meter box damage during the meter tests (Tr. at 8, 21-22). The Department finds that the Complainant has failed to prove that although the meter box damage might suggest possible damage to the meter it housed, that suggestion is quite negated by the accurate readings found during the meter testing. Moreover, it is not established that the meter box damage existed before the power loss incident on May 12, 2001. Further, the Company testified that if it had seen the meter box damage during previous meter tests, it would have treated the problem as a safety hazard and pulled the meter (id. at 50). The Department finds no reason to doubt the Company's testimony on this point; but in the end, it is the objective meter testing results that are dispositive. In regard to the Complainant's claims concerning the meter box damage, the Department finds that the Complainant has not met the burden of overcoming two accurate meter tests through clear and convincing evidence. See

Mellen v. Boston Gas Company, D.P.U. 91-AD-8, at 5-6; Miller v. Boston Edison Company, D.P.U. 95-AD-12, at 6 (1995).

Finally, the Complainant points to the lower bills rendered after the meter change of May 12, 2001 as evidence that the original meter did not function properly (Tr. at 7, 17).

Table 1, below lists the meter readings for the Complainant's account from April 1, 1999 through July 24, 2002.

Table 1

<u>Read Date</u>	<u>Meter Number</u>	<u>Reading</u>	<u>Days</u>	<u>Use - KWH</u>	<u>Cost</u>
4/1/99	D795845	83590			
4/27/99	D795845	83681	26	91	\$19.01
5/26/99	D795845	83899	29	218	\$31.57
6/25/99	D795845	84639	30	740	\$83.11
7/27/99	D795845	85639	32	1000	\$108.78
8/25/99	D795845	86734	29	1095	\$118.16
9/24/99	D795845	88165	30	1431	\$151.20
10/26/99	D795845	90081	32	1916	\$199.06
11/1/99	D795845	90412			
11/24/99	D795845	91826	29	1745	\$209.52
12/3/99	D795845	92393			
12/27/99	D795845	93798	33	1972	\$236.29
1/25/00	D795845	94823	29	1025	\$127.06
2/24/00	D795845	95919	30	1096	\$136.02
3/1/00	D795845	96125			
3/24/00	D795845	97017	29	1098	\$136.26
4/25/00	D795845	98139	32	1122	\$139.17
5/24/00	D795845	99674	29	1535	\$189.01
6/23/00	D795845	101696	30	2022	\$247.82
7/25/00	D795845	103716	32	2020	\$247.57
8/23/00	D795845	105581	29	1865	\$228.85
9/22/00	D795845	107507	30	1926	\$236.22
10/24/00	D795845	109697	32	2190	\$268.09
11/21/00	D795845	111493	28	1796	\$220.53
12/21/00	D795845	113212	30	1719	\$241.07 *
01/24/01	D795845	114414	34	1202	\$187.92 *
02/23/01	D795845	116301	30	1887	\$298.96 *
3/26/01	D795845	117437	31	1136	\$181.46 *
4/25/01	D795845	118635	30	1198	\$191.16 *
5/12/01	D795845 - Remove	119314			

<u>Read Date</u>	<u>Meter Number</u>	<u>Reading</u>	<u>Days</u>	<u>Use - KWH</u>	<u>Cost</u>
5/12/01	7097711 - Install	00000			
5/24/01	7097711	00333	29	1012	\$162.05 *
5/29/01	7097711	00493			
6/25/01	7097711	01405	32	1072	\$171.44 *
7/25/01	7097711	02502	30	1097	\$190.59 *
8/23/01	7097711	03530	29	1028	\$181.70 *
9/24/01	7097711	04765	32	1235	\$217.52 *
10/24/01	7097711	05886	30	1121	\$197.78 *
11/26/01	7097711	07215	33	1329	\$203.22 *
12/20/01	7097711	08225	24	1010	\$154.99
1/23/02	7097711	09676	34	1451	\$211.44
2/22/02	7097711	11072	30	1396	\$198.91
3/25/02	7097711	12457	31	1385	\$197.37
4/23/02	7097711	13455	29	998	\$131.99
5/23/02	7097711	14655	30	1200	\$154.39
6/21/02	7097711	16090	29	1435	\$183.90
7/24/02	7097711	17269	33	1179	\$151.75

*Billing of 11/21/00 through 11/26/01 totaling \$2,424.87 was canceled on Default Service.

Then the same usage for the same period was recalculated on Standard offer Service which totaled \$2,164.80.

(Exh. CO-1).

As indicated on Table 1, the Complainant's bill amounts varied throughout the entire period listed in the table. For example, on several bills rendered before the meter replacement, the amounts billed and the kilowatt hours ("KWH") used are relatively high as follows:

(1) June 23, 2000 for \$247.82 and 2022 KWH; (2) July 25, 2000 for \$247.57 and 2020 KWH; (3) August 23, 2000 for \$228.85 and 1865 KWH; (4) September 22, 2000 for \$236.22 and 1926 KWH; (5) October 24, 2000 for \$268.09 and 2190 KWH; and (6) February 23, 2001 for \$298.96 and 1887 KWH. During other periods prior to the meter replacement, the Complainant did not receive similarly high bills. For example, the amounts billed and KWH used for bills rendered on (1) January 24, 2001 for \$187.92 and 1202 KWH,

(2) March 26, 2001 for \$181.46 and 1136 KWH, and (3) April 25, 2001 for \$191.16 and 1198 KWH were noticeably lower than the bills dated June 23, 2000 through October 24, 2000 and

February 23, 2001. Further, a comparison of bills rendered in March 2000 and March 2001 with the bill rendered in March 2002 indicates a fluctuation in use persisting after the meter replacement. For the bills rendered before the meter replacement, the March 24, 2000 bill for \$136.26 averages 37.86 KWH used each day, and similarly the March 26, 2001 bill for \$181.46 averages 36.65 KWH used each day. In contrast, the March 25, 2002 bill, rendered after the meter replacement, in the amount of \$197.37, averages 44.68 KWH used each day, an increase over the March 23, 2000 and March 26, 2001 bills. Moreover, the Complainant acknowledged that his bills were still a little high and still fluctuated after the meter replacement (Tr. at 18-19).

The Department finds that there is not sufficient evidence showing the changes in bills rendered after the meter replacement to prove the existence of an malfunctioning original meter. A number of reasons could explain the fluctuations in bill amounts and KWH used, including the varying number of people living at the Residence (id. at 12, 14). The Department finds that the mere fact that electric bills were lower following the meter replacement does not defeat the presumption of accuracy associated with the two meter tests. See Miller v. Boston Edison Company, D.P.U. 95-AD-12, at 6-7; Nedler v. Boston Edison Company, D.P.U. 91-AD-38, at 6.

In summary, the Department finds the Complainant has failed to prove that the bills rendered on his account were inaccurate and reflected a defective meter. The Complainant did not meet the burden of showing through clear and convincing evidence that the meter, which tested accurate on two occasions, was defective. Accordingly, the Department determines that bills rendered to the Complainant from April 1, 1999 through July 24, 2002 are due and payable and that as of July 24, 2002, the Complainant owes the Company \$3,259.32. The Complainant may pay the balance due in the amount of \$3,259.32, either in a lump sum within 30 days of the issuance of this Order, or over a period of 33 months at a rate of \$100.00 per month for 32 months with a final payment of \$59.32, in addition to any current charges rendered, with the first payment due within 30 days of the issuance of this Order.

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED:

That the bills rendered to Patricia James from April 1, 1999 through July 24, 2002 are due and payable. The Complainant may pay the balance due in the amount of \$3,259.32, either in a lump sum within 30 days of the issuance of this Order, or over a period of 33 months at a rate of \$100.00 per month for 32 months with a final payment of \$59.32, in addition to any current charges rendered, with the first payment due within 30 days of the issuance of this Order.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).